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Decision

Matter of: Tri-Technic, Inc.

File: B-412037

Date: December 11, 2015

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DIGEST

In procurement conducted under two-phase design-build selection procedures, protest of agency's evaluation of a protester's phase 1 proposal and its decision to exclude the protester from phase 2 is denied where the agency's evaluation and determination as to which proposals were eligible for phase 2 were reasonable and in accordance with the solicitation's evaluation criteria.

DECISION

Tri-Technic, Inc., of Sonora, California, protests its exclusion from the second phase of competition under request for proposals (RFP) No. N62473-14-R-0050, issued by the Department of the Navy, Naval Facilities Engineering Command (NAVFAC), for multiple-award construction contracts for new construction, repair, and renovation of dry utilities construction projects. The protester challenges the agency's evaluation of Tri-Technic's proposal.

We deny the protest.

The RFP, issued as a competitive small business set-aside, provided for the award of up to three indefinite-delivery, indefinite-quantity (ID/IQ) contracts for new construction, repair, and renovation of dry utilities construction projects at various locations within NAVFAC's southwestern U.S. area of responsibility, including, but not limited to, California, Arizona, Nevada, Utah, Colorado, and New Mexico. RFP at 1. Award of the task orders would be on a fixed-price basis. The contract's estimated maximum dollar value is \$99 million; the task order range is \$300,000 to \$20 million. Id. at 1, 3. The RFP required offerors to demonstrate a minimum

aggregate bonding capacity of \$20 million, to allow for the management of multiple concurrent projects at the higher dollar magnitude within the task order range. Id. at 1.

Offerors were informed that award would be made on a best-value basis, using the two-phase design-build procedures of Federal Acquisition Regulation (FAR) subpart 36.3. RFP at 7-8. The RFP stated that the phase 1 evaluation would result in selecting a maximum of five of the most highly-qualified offerors, which would then be invited to submit phase 2 proposals. Id. at 8. The RFP advised that the agency intended to make award without discussions or any contact with offerors concerning proposals. Id. Further, the RFP cautioned offerors not to assume that they would be contacted or afforded any opportunity to qualify, discuss, or revise their proposals. Id.

For phase 1, offerors were informed that proposals would be evaluated for technical approach, experience, past performance, and safety. RFP at 10-16. Under the technical approach factor, the RFP stated that proposals would be rated either acceptable or unacceptable, and that a proposal rated as unacceptable would not advance to phase 2. Id. at 10. The experience and safety factors were of equal importance to each other, and, when combined, were of equal importance to past performance. Id.

For the experience factor, offerors were to submit a minimum of three, and a maximum of five, relevant construction projects, as well as a minimum of three, and a maximum of five, design projects, all of which were required to be similar in size, scope, and complexity to projects that might be ordered under the contract. RFP at 11, 12. For purposes of evaluation, relevant projects were defined as new construction or repair of dry utilities construction projects, by design-build or design-bid-build methods, with a construction cost of at least \$300,000. RFP at 11.

With regard to past performance, the RFP provided that proposals would be evaluated based on the relevant projects that were submitted under the experience factor. RFP at 14. Offerors were instructed to submit completed past performance questionnaires (PPQs) and construction contractor appraisal support system (CCASS) evaluations. Id. The RFP informed offerors that the agency reserved the right to obtain information for use in the evaluation of past performance from any and all sources, including sources outside the government. Id. The RFP specifically noted that the Past Performance Information Retrieval System (PPIRS) was included in the term "other sources." Id. The RFP informed offerors that those lacking relevant past performance history would not be evaluated favorably or unfavorably in past performance, but would receive an unknown confidence rating. Id. at 15. The RFP stated that the agency's assessment of an offeror's past

performance would be used as a means of evaluating the offeror's probability of successfully meeting the requirements of the RFP.¹ Id. at 15.

For the safety factor, the RFP required offerors to submit specific and general types of information regarding aspects of its safety record, its plan to select and monitor subcontractors, and any innovative safety methods the offeror planned to implement for the procurement. Id. at 15-16.

The agency received phase 1 proposals from 24 offerors, including Tri-Technic. AR at 11. The phase 1 proposals were evaluated by a technical evaluation team (TET) that was part of the source selection evaluation board (SSEB). Id. at 7.

For factor 2, experience, Tri-Technic submitted examples of five construction projects, and five design projects. AR at 9. For factor 3, past performance, Tri-Technic's proposal included completed PPQs for four of the five submitted construction projects. Id. Among these, the protester submitted a blank PPQ for one of the projects, and for another, the project was valued below the \$300,000 minimum. For the three remaining projects, one PPQ rated Tri-Technic as exceptional, one as very good, and the third as marginal. Id. at 11.

As relevant here, in its evaluation of Tri-Technic's past performance, the TET found the past performance of Tri-Technic's proposed design firms to be good, but described a number of issues concerning the protester's performance in past construction projects. AR, Tab 4, TET Report, at 201. Of the five construction projects for which Tri-Technic submitted PPQs, the TET did not consider two because, in one case, the PPQ was blank, and in the other, the minimum dollar threshold had not been met. Id. With respect to the other three, for one, completed in 2010, the protester was evaluated as very good. Id. at 200. Another project, completed in 2014, had originally been rated as exceptional, but a later non-final contractor performance assessment reporting system (CPARS) report indicated that Tri-Technic was rated marginal and satisfactory for certain project elements, with a comment that Tri-Technic was not recommended for similar requirements in the future.² Id. at 201. The third, also completed in 2014, was rated as marginal. Id.

¹ The source selection plan (SSP) stated that a satisfactory confidence rating meant that the agency had a reasonable expectation that the offeror would successfully perform the contract, based upon the offeror's recent/relevant performance record. Agency Report (AR), Tab 2, SSP, at 22. A limited confidence rating meant that the agency had a low expectation of successful performance. Id.

² We note that prior to the time the agency made its evaluation decision concerning this project, the CPARS report was finalized. AR at 12. It appears that the agency was not aware of the finalized CPARS evaluation until after the protest had been filed; however, the final version did not change from the earlier version.

Finally, in the PPIRS database, the agency found two more projects that Tri-Technic had completed in mid-2014, but had not submitted as part of its past performance proposal. Both projects were very similar in scope to the contract to be awarded under this RFP. Id. at 202. One project was covered by a CCASS evaluation and the other by a CPARS evaluation. Tri-Technic received marginal ratings for both of these projects.

The TET concluded that, based upon all of the information available to the agency through the PPQs and the additional CCASS and CPARS ratings obtained through the PPIRS database, Tri-Technic should receive a limited confidence past performance rating. Id. at 200.

The TET reported its findings to the non-TET SSEB members, who ranked the proposals and recommended that the five offerors identified as the most highly-rated advance to the second phase. AR, Tab 5, SSEB Report, at 8-10. A summary of the adjectival ratings for the five most highly-rated Phase 1 offerors and Tri-Technic is set forth below:

	Factor 1- Tech. Approach	Factor 2- Experience	Factor 3- Past Performance	Factor 4- Safety
Offeror 1	Acceptable	Outstanding	Substantial Confidence	Acceptable
Offeror 2	Acceptable	Good	Substantial Confidence	Acceptable
Offeror 3	Acceptable	Outstanding	Substantial Confidence	Outstanding
Offeror 4	Acceptable	Outstanding	Substantial Confidence	Acceptable
Offeror 5	Acceptable	Outstanding	Substantial Confidence	Outstanding
Tri- Technic	Acceptable	Good	Limited Confidence	Unacceptable

AR, Tab 4, TET Report, at 2.

After reviewing these reports, the source selection authority (SSA) selected the five firms identified as the most-highly qualified--which did not include Tri-Technic-- to proceed to phase 2. AR, Tab 6, SSA Decision. The agency notified Tri-Technic that it was not selected to move to the next phase, and provided a debriefing. AR, Tab 7, Notification of Non-Selection. This protest followed.

DISCUSSION

Tri-Technic argues that the agency improperly rated its past performance as inspiring limited confidence based on considering marginal ratings from CPARS reports that were still undergoing review, and failing to consider two of Tri-Technic's construction projects for which it received exceptional and very good ratings, respectively, as well as certain design projects for which its subcontractor received very good ratings. The protester also contends that the agency improperly evaluated its proposal under the experience and safety factors.

Where a protest challenges the evaluation of its proposal and its elimination from the competition, we do not conduct a new evaluation or substitute our judgment for that of the agency, but examine the record to determine whether the agency's judgment was reasonable and in accord with the solicitation evaluation criteria. Information Sys. Tech. Corp., B-291747, Mar. 17, 2003, 2003 CPD ¶ 72 at 2; Northwest Procurement Inst., Inc., B-286345, Nov. 17, 2000, 2000 CPD ¶ 192 at 5. Further, a protester's disagreement with an agency's evaluation does not establish that the evaluation was unreasonable. Americom Gov't Servs., Inc., B-292242, Aug. 1, 2003, 2003 CPD ¶ 163 at 4.

Here, the RFP specifically stated that a maximum of five of the most highly-qualified phase 1 offerors would be invited to submit phase 2 proposals. RFP at 8. In its evaluation of Tri-Technic's past performance, the agency noted that the past performance of Tri-Technic's design subcontractors was good, and assigned a strength. However, the agency also found that the submitted construction evaluations, combined with the additional CCASS/CPARS ratings obtained through the PPIRS database indicated that Tri-Technic had a recent history of marginal performance on relevant projects.³ AR, Tab 4, TET Report, at 201. Based upon this analysis, the agency assigned a limited confidence rating to Tri-Technic for past performance. Id. at 200. We find the agency's conclusions to be reasonable, and consistent with the RFP's evaluation criteria that required the agency to consider the information in the PPQs, but also allowed the agency to consider other sources, such as the PPIRS database. See RFP at 15.

Because we have found the agency's evaluation of Tri-Technic's past performance to be reasonable, we do not address the protester's arguments concerning the agency's evaluation of its proposal under the experience and safety factors. As noted above, the RFP stated that a maximum of five of the most highly-qualified phase 1 offerors would be invited to submit phase 2 proposals. RFP at 8. Here, all five of the selected offerors have substantial confidence ratings for past

³ Under the FAR, contractors are notified of CPARS evaluations as soon as practicable, and have up to 14 calendar days from the date of notification to submit comments, rebutting statements, or additional information. FAR § 42.1503(d). Tri-Technic does not contend that it did not have the opportunity to rebut either the referenced CCASS or CPARS evaluations.

performance, and equal or better ratings for the other factors. Even were we to conclude that Tri-Technic's arguments concerning the agency's evaluation of its experience and safety factors had merit, the protester's proposal would still not be one of the five mostly highly-rated offers, entitling the firm to submit a phase 2 proposals. This is because its lower past performance rating, which is equal in value to the experience and safety factors combined, remains one of limited confidence.⁴ RFP at 10. In this circumstance, the agency's determination not to invite Tri-Technic to submit a phase 2 proposal is unobjectionable.

The protest is denied.

Susan A. Poling
General Counsel

⁴ Tri-Technic also argues that the agency had a duty to clarify issues in the protester's phase 1 proposal. Protest at 13-14. We disagree. An agency may, but is not required to, engage in clarifications that give offerors an opportunity to clarify certain aspects of proposals or to resolve minor or clerical errors. FAR §15.306(a); Satellite Servs., Inc., B-295866, B-295866.2, Apr. 20, 2005, 2005 CPD ¶ 84 at 2 n.2.